IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

THURSDAY, THE 18TH JANUARY 2007 / 28TH PAUSHA 1928

WP(C).No. 32524 of 2006(V)

PETITIONER:

M.T.THOMAS, AGED 75 YEARS,
S/O.THOMAS, KALARIKKAL HOUSE,
KADAPPOOKKARA, KANAKARI, VEMPALLY P.O.-686 633,
KOTTAYAM DISTRICT.

BY ADV. SRI.P.JACOB VARGHESE
SRI.V.MANOJ KUMAR
SRI.VARUGHESE M EASO
SMT.PRAISHEEL PRAKASAM
SRI.VIVEK VARGHESE P.J.
SRI.K.B.ARUN

RESPONDENTS:

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1. KERALA STATE,
REP.BY DISTRICT COLLECTOR, KOTTAYAM.

2. ASSISTANT ENGINEER,
P.W.D., KURAVILANGAD.

BY GOVERNMENT PLEADER SRI. V.T.K.MOHANAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 18/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1- TRUE COPY OF DECREE IN O.S.229/79 OF ADDL. SUB COURT, KOTTAYAM.

EXT.P2- TRUE COPY OF PLAINT IN O.S.123/88 OF MUNSIFF'S COURT, ETTUMANOOR.

EXT.P3- TRUE COPY OF WRITTEN STATEMENT IN O.S.123/88 OF MUNSIFF'S COURT, ETTUMANOOR

EXT.P4- TRUE COPY OF DECREE IN OS.NO.123/88 OF MUNSIFF'S COURT, ETTUMANOOR

EXT.P5- TRUE COPY OF JUDGMENT IN OS.NO.123/88 OF MUNSIFF'S COURT, ETTUMANOOR.

EXT.P6- TRUE COPY OF JUDGMENT IN CRP NO.711/04 OF THIS HON'BLE COURT.

EXT.P7- TRUE COPY OF IA.NO.1348/06 IN OS.NO.123/88 OF MUNSIFF'S COURT, ETTUMANOOR

EXT.P8- TRUE COPY OF IA.NO.1349/06 IN OS.NO.123/88 OF MUNSIFF'S COURT, ETTUMANOOR

EXT.P9- CERTIFIED COPY OF ORDER IA.NO. 1348/06 IN OS.NO.123/88 OF MUNSIFF'S COURT, ETTUMANOOR DATED 23.11.06

EXT.P10- TRUE COPY OF ORDER IN IA.NO.1349/06 IN OS.NO.123/88 OF MUNSIFF'S COURT, ETTUMANOOR DATED 23.11.06

(TRUE COPY)

P.A TO JUDGE

M.SASIDHARAN NAMBIAR, J.

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W.P.(C)No.32524 OF 2006

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DATED THIS THE 18th DAY OF JANUARY, 2007

JUDGMENT

Petitioner is the plaintiff in O.S.123 of 1988 on the file of Munsiff Court, Ettumanoor. Respondents are defendants. Suit was filed for declaration of title and possession. The suit was originally decreed exparte. The exparte decree was set aside by the District Court in CMA 67 of 2003, when the order dismissing the application filed under Rule 13 of Order IX was challenged before the District Court. After the exparte decree was set aside, plaintiff filed I.A.1348 of 2006, an application under Order VI Rule 17 of Code of Civil Procedure and I.A.1349 of 2006, an application to implead third parties as additional defendants. Under Ext.P9 order, the application for amendment was dismissed. As per Ext.P10 order, the application to implead third party was dismissed. This petition is filed under Article 227 of Constitution of India challenging Exts.P9 and P10 orders.

2. Learned counsel appearing for the petitioner and learned Government Pleader were heard. The

amendment sought for under I.A 1348 of 2006 is to incorporate an additional plea in the plaint to the effect that even if plaintiff has no title, he has perfected title by adverse possession. Learned Munsiff, under Ext.P9, dismissed the application holding that after the exparte decree was set aside, as per the order in CMA 67 of 2003, the case was posted for several days and the application was filed belatedly and the documents in the suits were destroyed earlier and they are to be reconstructed and in such circumstances, the amendment application cannot be allowed. As rightly pointed out by learned counsel appearing for the petitioner, by the amendment, the nature or character of the suit is not changed. The case of the petitioner is that he has title to the property under the document set up in the plaint. There is a discrepancy in the survey number. The amendment sought for is only to the effect that even if petitioner has no title as per the title deed, he has perfected the title by adverse possession. By such amendment, no prejudice will be caused to the respondent. In such circumstances, Ext.P9 order is

quashed. I.A.1348 of 2006 stands allowed and petitioner is permitted to amend the plaint. Respondents are entitled to file an additional written statement. Though Ext.P10 order was challenged, I do not find any infirmity warranting interference in that order. The proposed defendants are not necessary parties to the suit. Therefore the dismissal of the application to implead them is neither illegal nor improper. Petitioner is at liberty to institute a separate suit as against the proposed defendants, if so advised. The challenge against Ext.P9 order is therefore rejected.

Writ petition is disposed accordingly.

M.SASIDHARAN NAMBIAR, JUDGE

lgk/-